



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-18/47747

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Eau Claire County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on April 9, 2001, at Eau Claire, Wisconsin. The petitioner appeared at a hearing scheduled for March 13, 2001, but did not have adequate documentation to support her position. The matter was rescheduled with her consent to allow her to obtain more information.

The issue for determination is whether the petitioner's wife is entitled to receive a portion of the petitioner's income under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Cheryl Heffling
3905 Birch Crest Lane
Eau Claire, WI 54701

Wisconsin Department of Workforce Development
Bureau of Work Support Programs
201 East Washington Avenue
P.O. Box 7935
Madison, WI 53707-7935
Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Judy Dowd, ESS
Eau Claire County Dept Of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN 396-03-3058, CARES #3109738431) is a resident of a nursing home in Eau Claire County.
2. The petitioner's wife lives in the community.
3. The petitioner receives \$1714.18 in income each month.
4. The petitioner's spouse receives a total of \$732.94 in income each month.
5. The petitioner's spouse incurs the following expenses each month:
 - a. mortgage \$ 503.28 (includes insurance and taxes)
 - b. Charter Cable \$ 11.03
 - c. groceries \$ 200
 - d. clothes \$ 75
 - e. entertainment \$ 40
 - f. meals at nursing home \$ 30 (for wife when visiting husband)
 - g. trash pickup \$ 10.35
 - h. gas \$ 90
 - i. car insurance \$ 43.50
 - j. car maintenance \$ 75
 - k. life insurance \$ 31.13
 - l. snow & lawn \$ 30
 - m. health insurance \$ 105
 - n. health ins. & med. \$ 53
 - o. misc. household exp. \$ 25
 - p. window wash \$ 10
 - q. furnace checkup \$ 14
 - r. utility \$ 266.75
 - s. telephone \$ 50
 - t. personal hygiene \$ 50
6. The petitioner's spouse does not require American legion or VFW dues to meet her basic needs.
7. Clothes, ostomy bags, and cash for the petitioner are unnecessary to meet his spouse's basic needs.
8. The petitioner's spouse does not currently need a new hearing aid or car transmission.
9. The petitioner's wife requires \$70 a month in gas to meet her basic needs.
10. The petitioner's spouse seeks to increase her monthly income allotment in order to meet her basic needs.

DISCUSSION

Both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The allowance is the lesser of \$2,175 or \$1,875 plus an excess shelter allowance, which is any shelter cost over \$562.50. *MA Handbook*, Appendix, §23.6.0. An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law

restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to *exceptional circumstances resulting in financial duress*, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

§49.455(8)(c), Stats. Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g.*, MRA-45/#22021 MRA-32/22456 MRA-05/37611 MRA-13/45972 MRA-14/22543.

The petitioner is institutionalized and his spouse lives in the community. His spouse receives \$732.94 from social security each month. He receives \$1,714.18 each month. She contends that the \$1,875 allowed by the spousal impoverishment rules is inadequate, and requests that she receive enough of her husband's money to place her above this amount. The \$1,875 figure is used as the starting point for her allowance because her shelter costs are less than \$562.50. *Exhibit 1*.

The spouse submitted a budget to support her position. *Id.* I have accepted most of the spouse's figures, but have modified some and eliminated others. The \$25 annual request for American Legion dues and \$17 annual request for VFW dues are unnecessary because they are for her husband and he cannot participate in those activities. Nor is the allowance she requests for his clothes, ostomy bags and cash necessary. He is allowed \$40 per month for his personal needs, and this allowance does not count toward his wife's expenses. §49.45(7)(a), Stats. Furthermore, medical supplies such as the ostomy bags should be supplied by his nursing home. .

I have reduced her \$40 per week request to have her hair set and washed. I understand that it is important to her to look good, but \$172 a month (\$40 times 4.3 weeks per month) for hair care cannot be justified as a basic and necessary expense. The petitioner does not have a budget for personal hygiene items such as soap and toothpaste. I will allow \$50 a month for this, and she may use a portion of it to get her hair done.

The spouse's budget includes \$600 for a hearing aid and \$2,000 for a new car transmission. There is no testimony that she needs either right now. Of course cars, especially aging ones such as the petitioner's, require repairs and hearing aids must eventually be replaced. To account for these unforeseen expenses I have added \$15 a month to the wife's medical expenses and allowed \$75 a month for car maintenance.

I also reduced the \$115 requested for gas expense. She states that she makes three 54-mile trips a week to visit her husband in the nursing home. When the three trips each week are multiplied by the 54 miles for each trip and again by the 4.3 weeks in each month, the total mileage is 696.6. Assuming gas is \$2 a gallon and her car gets 20 miles a gallon, her cost of visiting her husband is \$69.66. Ninety dollars should cover these visits and any additional costs entailed in normal errands.

The \$30 a month for snow and lawn expense is based upon the best estimate I came up with using the \$15 per snowfall cost of shoveling and \$60 cost of lawn mowing. Other expenses that occurred annually were prorated to a monthly cost.

All of these expenses total \$1,713.04, which is less than the basic monthly needs allowance provided in the spousal impoverishment statute. Therefore, the petitioner's wife is not entitled to any more than the

\$1,875 allowed as her basic living expense. I note that even if I had allowed the wife's entire request for hair styling and gas, she still would not exceed the \$1,875 figure.

CONCLUSIONS OF LAW

The petitioner's wife is not entitled to an allocation from her husband's income that will provide her with more than \$1,875 because her necessary and basic needs do not exceed this amount.

NOW, THEREFORE, it is **ORDERED**

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this _____ day of
_____, 2001.

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals

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cc: Judith Hodgson - Fax
Susan Wood
Cheryl Heffling, 3905 Birch Crest Lane, E C

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